



FINAL REPORT OF THE COMMISSION TO REVIEW THE EFFECTIVENESS OF THE COMPREHENSIVE SHORELAND PROTECTION ACT

November 30, 2006

(SB 83, Chapter 209, Laws of 2005)

Compiled by the
Shoreland Section Supervisor
Wetlands Bureau
NH Department of Environmental Services



COMMISSION MEMBERS

Interest

Senate
Senate
House of Representatives
House of Representatives
Commissioner, NH DES
Director, Office of Energy and Planning
Regional Planning Commissions
NH Lakes Association
At large waterfront owner
At large waterfront owner
NH Farm Bureau Federation
NH Home Builders and Remodelers
UNH (estuary experience required)
NH Association of Realtors
NH Municipal Association
NH Rivers Council
NH Timberland Owners
Landscaping Consultant
NH Conservation Commissions
NH Marine Trades Association
NH Attorney General
NH Wildlife Federation
NH Waterworks Association
NH Natural Resource Scientists

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Stephen Del Deo
Cindy Balcius

NH DES Wetlands Bureau

BACKGROUND

In 1991 the General Court of the State of NH enacted the Comprehensive Shoreland Protection Act, RSA 483-B (the CSPA), recognizing that “the shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters,” that “the public waters of New Hampshire are valuable resources held in trust by the state,” and that “the state has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and the adjacent shoreland for the greatest public benefit.”

In order to prevent “significant negative impacts on the public waters” that could result due to “uncoordinated, unplanned and piecemeal development along the state’s shorelines,” the General Court declared “that the public interest requires the establishment of standards for the subdivision, use, and development of the shorelands of the state’s public waters.” Although enacted in 1991, the CSPA did not become fully effective until funding was appropriated in 1994.

On July 1, 2005, eleven years after the CSPA became effective, Senate Bill 83 “established a commission to study the effectiveness of the comprehensive shoreland protection act and to explore standards that are better suited to local and state resource needs and to preservation of the public waters of the state.” This Commission would be comprised of 24 members representing a variety of stakeholders including the General Court, the conservation community, the regulatory community, natural resource scientists, agricultural interests, business and economic interests, and members of the general public.

The charge of the Commission was to assess land-use impacts around the state’s public waters and the current definitions and size, type, and location standards pertaining to structures as outlined in the CSPA, review the current shoreland buffer and setback standards, nonconforming use, lot, and structure standards, structural exemption from setback requirements, viewing and access corridor options within the protected shoreland zone, and the permitting, waiver, variance, and enforcement provisions of the CSPA.

Upon review of these issues the Commission was also charged with identifying areas of the CSPA in need of revision and recommending revisions to the CSPA, as well as options, suggestions, or alternatives to the CSPA including the determination of whether it should be merged with other applicable laws such as the state’s wetlands laws. The Commission was also made responsible for the exploration of funding options for the shoreland protection program at the department of environmental services. The final report of the Commission shall be made to the Senate President, the Speaker of the House of Representatives, the Governor, the Commissioner of the Department of Environmental Services, the Senate Clerk, the House Clerk, and the State Library on or before November 30, 2006.

MEETINGS

The 24 members of the Commission convened for the first time on September 15, 2005. At this meeting the Commission elected a Chair and Vice Chair and established a monthly meeting schedule for the purpose of reviewing the effectiveness of the standards and regulatory processes established under the CSPA, identifying areas in need of revision or clarification, and exploring funding options for the implementation of the Shoreland Program by the NH Department of Environmental Services. Meetings were noticed in the House and Senate calendars. The meetings were recorded and minutes were kept for each meeting.

After reviewing the various standards established by the CSPA, in conjunction with trends in shoreline development and water quality, the Commission has found that the CSPA in its current form does not

offer adequate protection to the state's surface waters and shorelands. The natural, vegetated buffers within the protected shoreland continue to be lost or degraded, putting surface water quality at increased risk. This degradation in water quality adversely impacts human use and value, as well as the ecological value, of surface waters.

FINDINGS

The Commission identified the following as deficiencies of the current CSPA:

- A lack of funding for adequate staff and resources to provide the necessary levels of outreach, education, and enforcement.
- A lack of education of both local officials and the general public.
- The absence of clear delegation of the responsibility for ensuring that standards of the CSPA are upheld through both state and local permitting processes.
- The absence of clear delegation of the responsibility for enforcement of violations of the CSPA.
- The ability of towns to maintain primary building setbacks which are less than the 50 ft setback established in the CSPA.
- The basal area method of measuring the Natural Woodland Buffer, and the requirement to maintain 50% density of trees and saplings over a 20 year period is unduly difficult for both the landowner and the regulatory community.
- The current language of RSA 483-B-11 has allowed continued expansion of existing non-conforming structures and excessive development within the primary building setback.
- Confusion related to the areas which fall under the jurisdiction of the CSPA.
- Significant quantities of contaminants and nutrients continue to enter the protected waters through unprotected tributaries.
- There is potential for excessive levels of development in areas serviced by municipal sewer.
- There is a lack of incentives to encourage innovative approaches to shoreland protection.

RECOMMENDATIONS

In response to the finding the Commission recommends that legislation be introduced to effect the following changes:

1. Recommend that permitting fees be assessed as necessary to fund additional staff positions to implement the CSPA at an estimated annual cost of \$600, 000 and allocate an additional \$150,000 for education and outreach.
2. The setback for primary structures to protected waters shall be at least 50 feet in all towns.
3. RSA 483-B:6 shall be revised to clearly state that all necessary state and local permits shall be obtained prior to the commencement of any activity within the protected Shoreland.
4. The Department of Environmental services shall adopt rules establishing standard information that shall be submitted with all requests for permits, variances and waivers required for activities within the protected shoreland, whether made to a municipal, county or state regulatory authority for the purpose of documenting compliance with RSA 483-B:6. (See Appendix C)
5. Building within the protected shoreland in towns that do not have local zoning ordinances shall require a permit through the Department of Environmental Services. (See Appendix C)
6. The language of the CSPA shall clearly state that no permit shall be issued by any municipal or state agency if it fails to comply with the language or intent of the CSPA. (See Appendix C)
7. The current methodology for measuring and maintaining the Natural Woodland Buffer within the 50-foot area between the Reference line and the Primary Building Line should be replaced with a method which allows a managed cut of trees, measured with a point system, and prohibits the

removal of vegetation and natural ground cover under 3 feet in height in areas within 50 feet of the reference line. Within the area between 50 and 150 feet from the reference line, 50% of the area outside the impervious area footprint shall remain undisturbed. (See Appendix A)

8. The total constructed, impervious surface area within the protected shoreland shall not exceed 20% of the area of the lot located within the protected shoreland unless the owner agrees to a deed restriction prohibiting tree cutting within 50 feet of the reference line, in which case 25 % of the area may be impervious surface. In instances when the existing tree cover has been depleted, the 25% impervious coverage may be granted in exchange for additional tree planting within 50 feet of the reference line. The limit may be further increased to 30% provided the development includes the implementation of a DES approved storm water control and drainage plan designed to prevent any increase in run-off to the surface water, in addition to the requirements for 25% impervious surface. (See Appendix B)
9. "Impervious surface" shall be defined as any areas that are paved, covered, compacted, or limit infiltration of stormwater. This includes buildings, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways." (See Appendix B)
10. The state shall adopt the NH Hydrologic Database for the purpose of identifying stream order.
11. The exemption of the Saco and Pemigewasset Rivers shall be eliminated and those Rivers should have the full protection of the CSPA.
12. The full protection of the CSPA shall be extended to all third order and higher streams as identified by the NH Hydrologic Database.
13. The exemptions for agricultural and forestry activities as described in RSA 483-B:9 (V) shall continue to be incorporated into any revisions that may be proposed to the language of RSA 483-B.
14. The language of RSA 483-B:9 (V) (d) (4) and RSA 483-B:9 (V) (e) (3) which eliminates restrictions on the density of development in areas serviced by municipal sewer should be removed from the CSPA.
15. Revise conflicting language defining water dependent structures, perhaps by replacing the language of RSA 483-B:4 (XXVI) with that of RSA 483-B:9, II (c).
16. Repeal RSA 483-B:19, as it will be redundant with RSA 483-B:8 and the proposed modifications to RSA 483-B:6.
17. Amend RSA 483-B:9, IV-B to include public roads and public access facilities including boat ramps.

Respectfully Submitted,

Representative David Currier, Chairman

Appendices

Appendix

A.	Woodland Buffer Proposal
A-1	Buffer Bibliography
A-2	Field validation of the Buffer Proposal
B.	Impervious Surface Proposal
B-1	Relevant town information
C.	Proposed Revisions to RSA 483-B:6, Prior Approval; Permits
C-1	Decision Tree Outlining Current Permitting Requirements within the Protected Shoreland
D.	River Miles Spreadsheet
E.	Maps Illustrating Stream Coverage by Order
F.	Minutes
F-1	September 15, 2005
F-2	September 29, 2005
F-2a	Presentation: An Assessment of Problems within Shoreline Regulations in NH
F-3	October 20, 2005
F-3a	Presentation: Presentation by Brad Kuster, Conservation Law Foundation
F-3b	Presentation: The Comprehensive Shoreland Protection Act in Action
F-4	November 7, 2005
F-4a	Presentation: Wetland Buffers
F-5	December 12, 2005
F-5a	Presentation: NH's Changing Landscape
F-5b	Presentation: Documented Violations within the Protected Shoreland
F-6	January 9, 2006
F-7	February 13, 2006
F-8	March 13, 2006
F-9	April 10, 2006
F-10	May 8, 2006
F-11	June 13, 2006
F-12	July 10, 2006
F-13	August 14, 2006
F-14	September 19, 2006
F-15	October 16, 2006
F-16	November 13, 2006
G.	White Papers
G-1	NH Rivers Council
G-2	Rivers Management Advisory Committee
G-3	Ashuelot River Advisory Committee
G-4	Connecticut Joint River Commission
G-5	Pemigewasset River Advisory Committee
G-6	Lamprey River Commission

G-7	Exeter River Advisory Committee
G-8	Lakes Management Advisory Committee
G-9	NH Lakes Association
G-10	NH Marine Trades Association
G-11	Steve Winters
G-12	NH Fish & Game